



DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-841]

Mattresses from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that mattresses from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2019, through December 31, 2019.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4031.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2020, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of mattresses from Thailand, in which we also postponed the final determination until March 18, 2021.¹ A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.² The Issues and Decision Memorandum is a public document and is on file

¹ See *Mattresses from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 69568 (November 3, 2020) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Mattresses from Thailand,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The products covered by this investigation are mattresses from Thailand. For a full description of the scope of this investigation, *see* Appendix I of this notice.

Scope Comments

In Commerce's Preliminary Scope Decision Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope) in scope case briefs or other written comments on scope issues.³ Certain interested parties commented on the scope of the investigation as it appeared in the Preliminary Scope Decision Memorandum, unchanged from the *Initiation Notice*.⁴ For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Memorandum.⁵ In the Final Scope Memorandum, Commerce determined that it is not modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. For a list of these issues, *see* Appendix II.

³ *See* Memorandum, "Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated October 27, 2020 (Preliminary Scope Decision Memorandum).

⁴ *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 23002 (April 24, 2020) (*Initiation Notice*).

⁵ *See* Memorandum, "Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, the Socialist Republic of Vietnam, and the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with, and hereby adopted by, this notice (Final Scope Memorandum).

Verification

As stated in the *Preliminary Determination*, Commerce preliminary relied upon total adverse facts available (AFA), pursuant to section 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), in determining the weighted-average dumping margins for both mandatory respondents in this investigation, Nisco (Thailand) Co., Ltd. (Nisco) and Saffron Living Co., Ltd. (Saffron). Accordingly, we did not conduct verification under section 782(i) of the Act.⁶

For the purposes of this final determination, Commerce is relying on information submitted by Saffron, and applying partial, rather than total, AFA to Saffron.⁷ Because Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, pursuant to section 776(a)(2)(D) of the Act, we have relied upon the information submitted on the record as facts available in making our final determination.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from interested parties, we made certain changes to the margin calculations for Saffron. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Use of Adverse Facts Available

Nisco failed to cooperate in this investigation.⁸ Therefore, in the *Preliminary Determination*, pursuant to sections 776(a)(1), 776(a)(2)(A)-(C), and 776(b) of the Act, we assigned Nisco an estimated weighted-average dumping margin based on AFA. No parties filed comments concerning the *Preliminary Determination* with respect to Nisco, and there is no new information on the record that would cause us to revisit the *Preliminary Determination*. Accordingly, we continue to find that the application of total AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to Nisco. In applying total AFA, we continue to

⁶ *See Preliminary Determination.*

⁷ *See* Issues and Decisions Memorandum.

⁸ *See Preliminary Determination* PDM at 8-10.

determine an estimated weighted-average dumping margin for Nisco of 763.28 percent, the highest dumping margin alleged in the Petition,⁹ and which Commerce corroborated to the extent practicable within the meaning of section 776(c) of the Act.¹⁰

In the *Preliminary Determination*, Commerce determined that Saffron significantly impeded this investigation and failed to cooperate to the best of its ability through its participation in a scheme to evade the payment of cash deposits, and (in part) on that basis applied total AFA to Saffron.¹¹ As discussed in the accompanying Issues and Decision Memorandum, we continue to find that the application of AFA to Saffron is warranted with respect to its participation in that scheme. However, for this final determination, Commerce is applying partial, rather than total, AFA to Saffron. Specifically, as partial AFA, we have applied the highest petition dumping margin of 763.28 percent only to the sales of mattresses affected by Saffron's scheme to misrepresent the true producers of certain mattresses to avoid payment of cash deposits, weight averaged with the dumping margin calculated for Saffron's other sales using the reported data.¹²

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for companies not individually examined. Generally, under section 705(c)(5)(A)(i) of the Act, this rate shall be an amount equal to the average of the estimated dumping rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. However, section 705(c)(5)(A)(ii) of the Act provides that if the antidumping rates established for all companies

⁹ See *Initiation Notice*; see also Checklist, "Antidumping Duty Investigation Checklist," dated April 20, 2020 (Initiation Checklist).

¹⁰ See *Preliminary Determination* PDM at 8-10.

¹¹ See Memorandum, "Preliminary Results Memorandum: Application of Adverse Facts Available to Saffron Living Co., Ltd.," dated October 27, 2020 at 4.

¹² See Memorandum, "Final Determination Analysis Memorandum for Saffron Living Co., Ltd.," dated concurrently with this memorandum.

individually examined are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, then Commerce may use “any reasonable method” to establish an all others rate.

As explained above, the sole estimated weighted-average dumping margin calculated for Saffron is based entirely on facts available. In the specific circumstances of this case, we find that a reasonable method to determine the all-others rate under section 735(c)(5)(B) of the Act here is to apply Saffron’s individual estimated antidumping rate as the all-others rate for companies not individually examined.

Final Determination

Commerce determines that the weighted-average dumping margins are as follows:

Exporter/Producer	Estimated Weighted-Average Dumping Margin (percent)
Nisco (Thailand) Co., Ltd.	763.28
Saffron Living Co., Ltd.	37.48
All Others	37.48

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in the proceeding, in accordance with 19 CFR 351.224 (b).

Continuation of Suspension of Liquidation

In accordance with section 733(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after November 3, 2020, the date of the publication in the *Federal Register* of the affirmative *Preliminary Determination*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for entries of subject merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this final determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of mattresses from Thailand no later than 45 days after this final determination. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an AD duty order directing CBP to assess, upon further instruction by Commerce, AD duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or

destruction of APO materials, or conversion to judicial protective order, is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 18, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term “mattress” denotes an assembly of materials that at a minimum includes a “core,” which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain: (1) “upholstery,” the material between the core and the top panel of the ticking on a single-sided mattress; or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) “ticking,” the outermost layer of fabric or other material (*e.g.*, vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only “adult mattresses” and “youth mattresses.” “Adult mattresses” are frequently described as “twin,” “extra-long twin,” “full,” “queen,” “king,” or “California king” mattresses. “Youth mattresses” are typically described as “crib,” “toddler,” or “youth” mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of “innerspring mattresses,” “non-innerspring mattresses,” and “hybrid mattresses.” “Innerspring mattresses” contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as “innerspring mattresses” or “hybrid mattresses.” “Hybrid mattresses” contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

“Non-innerspring mattresses” are those that do not contain any innerspring units. They are generally produced from foams (*e.g.*, polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.*, convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a “mattress foundation.” “Mattress foundations” are any base or support for a mattress. Mattress foundations are commonly referred to as “foundations,” “boxsprings,” “platforms,” and/or “bases.” Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set in combination with a mattress foundation.

Excluded from the scope of this investigation are “futon” mattresses. A “futon” is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A “futon mattress” is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are

upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as “convertible sofas,” “sofabeds,” “sofa chaise sleepers,” “futons,” “ottoman sleepers” or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People’s Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009); *Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam*, 73 FR 75391 (December 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are “mattress toppers.” A “mattress topper” is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Discussion of the Methodology
- V. Discussion of the Issue
 - Comment: Whether Commerce Lawfully Applied Facts Available and Adverse Facts Available
- VI. Recommendation

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